

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

EVA MARIE GUTIERREZ,

Plaintiff,

vs.

No. CV 1:21-0348 JHR

**KILOLO KIJAKAZI,
Acting Commissioner of Social Security,**

Defendant.

ORDER

Plaintiff's Unopposed Motion for Fees Pursuant to the Equal Access to Justice Act (doc. 37) is GRANTED. Defendant shall pay Plaintiff \$6,306.60 in attorney fees. Payment of this amount shall constitute a complete release from and bar to any and all claims Plaintiff may have relating to EAJA fees in connection with this action. However, the EAJA award is without prejudice to Plaintiff's attorney's right to seek attorney fees pursuant to Social Security Act § 206(b), 42 U.S.C. § 406(b), subject to the offset provisions of the EAJA. *See* 28 U.S.C. § 2412(c)(1).

Under *Astrue v. Ratliff*, 130 S.Ct. 2521, 2528-29 (2010), EAJA fees awarded by this Court belong to the Plaintiff and are subject to offset under the Treasury Offset Program (31 U.S.C. §3716(c)(3)(B)). This Court therefore orders the EAJA fees to be paid to Plaintiff. If, after receiving the Court's EAJA fee order, the Commissioner (1) determines that Plaintiff has properly assigned her right to EAJA fees to her attorney; (2) determines that Plaintiff does not owe a debt that is subject to offset under the Treasury Offset Program; and (3) agrees to waive the requirements of the Anti-Assignment Act, then the EAJA fees will be made payable to Plaintiff's attorney. However, if there is a debt owed under the Treasury Offset Program, the Commissioner cannot agree to waive the

requirement of the Anti—Assignment Act, and the remaining EAJA fees after offset will be paid by a check made out to Plaintiff but delivered to Plaintiff's attorney. Whether the check be made payable to Plaintiff or the attorney, the check should be sent to Olinsky Law Group at the following address: 250 South Clinton Street, Suite 210, Syracuse, NY 13202.

BY THE COURT:



JERRY H. RITTER

United States Magistrate Judge

s/Francesca J. MacDowell

Francesca J. MacDowell
Of Counsel, Olinsky Law Group
Attorney for Ms. Gutierrez
P.O. Box 328
Placitas, NM 87043
t. 505.404.8859
f. 5053395.7557
e. macdowelllaw@gmail.com

Approved by email on 6/20/23

Margaret Sobota, Esq.
Special Assistant U.S. Attorney
Attorney for Commissioner
Office of the General Counsel
Social Security Administration
6401 Security Boulevard
Baltimore, MD 21235
t. 312.596.1860
f. 303.844.0770
e. margaret.sobota@ssa.gov